

1 **J. DAVID NICK, Esq.** (SB#157687)
2 **EDITTE LERMAN, Esq.** (SB#241471)
3 45060 Ukiah Street
4 P.O. Box 802
5 Mendocino, CA 95460
6 Tel: (707) 937-1711
7 Fax: (707) 937-2207

8 Attorneys for Plaintiff
9 ZACHARIAH JUDSON RUTLEDGE
10

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 * * * * *

16 ZACHARIAH JUDSON RUTLEDGE,

17 Plaintiff,

18 vs.

19 COUNTY OF SONOMA,
20 MICHAEL POTTS, RUSSEL L.
21 DAVIDSON, JAMES PATRICK CASEY,
22 CHRISTINE M. COOK, DETECTIVE
23 BEAU R. MARTIN, SONOMA
24 COUNTY SHERIFF'S DEPARTMENT;
25 SONOMA COUNTY DISTRICT
26 ATTORNEY'S OFFICE; and DOES 1
through 40.

Defendants.

CASE NO.: CV 07-04274 EMC

**EX PARTE APPLICATION
FOR LEAVE TO CORRECT CAPTION
ON FIRST AMENDED COMPLAINT
FOR LEAVE TO AMEND SUMMONS;
(Proposed) ORDER**

[FCRP 15]

(Date of completion of service set for)
Date: February 29, 2008

1
2 **EX PARTE APPLICATION FOR LEAVE TO CORRECT CAPTION OF FIRST**
3 **AMENDED COMPLAINT AND TO AMEND SUMMONS: DECLARATION OF**
4 **COUNSEL**

5 1. I, Editte Lerman, am an attorney licensed to practice law in the State of
6 California and am the counsel for plaintiff, Zachariah Rutledge, in this action. Except as
7 otherwise stated, I have personal knowledge of every fact stated in this declaration and, if called
8 as a witness, could and would testify competently thereto.

9 2. I am a resident of the State of California, residing or employed in Mendocino,
10 California. I am over the age of 18 years and am not a party to the above-entitled action. My
11 business address is 45060 Ukiah Street, P.O. Box 802, Mendocino, CA 95460.

12
13 **PLAINTIFF ERRORED IN FAILING TO ADD NAMES OF TWO DEFENDANTS IN**
14 **CAPTION OF FIRST AMENDED COMPLAINT**

15 3. On December 21, 2007 Plaintiff filed the first amended complaint. Three
16 additional defendants were named, who were originally identified as DOES 1-3 on the first
17 Complaint. The names of the identified defendants erroneously omitted from the caption are J.
18 MICHAEL MULLINS and STEPHAN R. PASSALACQUA. The names of defendants is also
omitted on the summons.

19 **NONE OF THE DEFENDANTS HAVE BEEN SERVED AND COUNSEL FOR ALL**
20 **DEFENDANTS EXCEPT JACOBS AND POTTS REFUSED TO WAIVE SERVICE OF**
21 **SUMMONS**

22 4. On January 14, 2008 Plaintiff was contacted by Bonnie A. Freeman, Esq. Ms. Freeman
23 informed Plaintiff that she has been authorized to accept service for all of the defendants except,
24 Messrs. Potts and Jacobs. On January 15, 2008, a Notice of Lawsuit and Request for Waiver
25 of Service of Summons was sent to Ms. Freeman for the defendants she represents. On January
26

1 17, 2008, Ms. Freeman contacted my office and informed me that she will not waive service of
 2 summons due to the defect in caption of the summons and the first amended complaint in that
 3 they do not name all parties.

4 On January 14, 2008 Plaintiff also sent a Notice of Lawsuit and Request for Waiver of
 5 Service of Summons to the California Attorney General for service of defendant Michael Potts.

6 As of the date of the filing of this application, the California Attorney General has not
 7 made contact with the plaintiff. The remaining defendant, Greg Jacobs, has not been located,
 8 contacted, or served by Plaintiff.

9
 10 I declare under penalty of perjury that the foregoing is true and correct, and that this
 11 declaration is executed on January 22, 2008 at Mendocino, California.

12
 13 -----/s/-----

14 Editte Lerman

15 POINTS AND AUTHORITIES

16
 17 Federal Rules of Civil Procedure 15 - Amended and Supplemental Pleadings provides in
 18 part,
 19

20 (a) Amendments Before Trial.

21 (1) Amending as a Matter of Course. A party may amend its pleading once as
 22 a matter of course:

23 (A) before being served with a responsive pleading;

24 (2) Other Amendments. In all other cases, a party may amend its pleading
 25 only with the opposing party's written consent or the court's leave. The court
 26 should freely give leave when justice so requires.

(*Fed. R. Civ. P.* 15(a)(1)-(2).)

1
2 Although the full name of each individual or entity named as a party in the action should
3 be set forth accurately in the complaint or in some other pleading in which a claim for relief is
4 first stated against that party, this requirement is interpreted liberally. In the absence of
5 prejudice, the court will overlook, or permit a party to amend, errors and omissions in the
6 naming of parties. (*Yeseta v. Baima*, 837 F.2d 380, 382-383 (9th Cir. 1988); *Blanchard v. Terry*
7 *& Wright, Inc.*, 331 F.2d 467, 469 (6th Cir. 1964))

8 Here, the summons and complaint have not been served and the defendant's have
9 refused to waive the service of the summons, and the deadline for service of the summons and
10 complaint has been set to February 29, 2008 (See Document 9). Therefore, the defendants
11 cannot be prejudiced by leave to amend, errors and omissions in the naming of parties.

12 CONCLUSION

13 The Court should grant the plaintiff leave to amend to correct the errors and omissions
14 in the naming of parties in the First amended Complaint and leave to amend the Summons.

15
16 Dated: January 22, 2008

17 Respectfully submitted,

18
19 -----/s/-----

20 Editte Lerman
21 Attorney for Plaintiff
22 Zachariah Rutledge
23
24
25
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ORDER

Satisfactory proof having been made and good cause appearing,

IT IS ORDERED THAT:

Plaintiff's application for leave to amend Summons and the First Amended Complaint is granted. Plaintiff is ordered to serve a copy of this order upon all defendants.

Dated: January 23, 2008.

Edward M. Chen
UNITED STATES DISTRICT COURT
MAGISTRATE JUDGE

